IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1172 of 2007

Vivekanandan alias Kunjan .. Petitioner

Vs.

1. The Government of Tamilnadu
rep. by Secretary,
Prohibition and Excise Department
Secretariat, Chennai-9.

2. The Commissioner of Police/
Detaining Authority
Coimbatore City. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.N.A.Nissar Ahmed
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner/detenu, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu himself has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the second respondent vide C.No.50/G/IS/2007, dated 7.6.2007, to quash the same and to consequently, direct his production before this Court and to set him

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at liberty.

3.1. The order of detention dated 7.6.2007 was passed on the basis of ground case in Crime No.598 of 2007 for alleged commission of offence under Section 392 of the Indian Penal Code, complaint of which was given by one Marudhupandy. The allegation against the detenu was that on 6.5.2007 at 1700 hours, after spending some time at the park along with his friends, when he came to take his TVS XL Super moped, which was parked in front of the Corporation Health Office near the aforesaid park, he saw two persons trying to break open the lock of the vehicle. When the complainant and his friends tried to catch the accused, the detenu and his associate took out knives, brandished the same and threatened to kill them. On seeing their atrocious activities, people ran helter shelter. On the complaint of the said Marudhupandy, a crime, as stated above, was registered and pursuant to the investigation, the detenu was arrested.

3.2. That apart, the detaining authority also took note of the three adverse cases pending against the detenu, viz., Crime Nos.1684 of 2005 and 66 of 2006 on the file of Saibaba Colony Police Station for the offences punishable under Section 379 and 506 of the Indian Penal Code; and Crime No.1634 of 2006 on the file of Race Course Police Station for the offence punishable under Sections 457, 380 read with 75 of the Indian Penal Code.

3.3. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an "Goonda" and was kept in custody at Central Prison, Coimbatore.

4. Mr.N.A.Nissar Ahmed, learned counsel for the petitioner submits that the order of detention was passed by the second respondent mechanically, even before formulating the grounds of detention. To substantiate the said contention, the learned counsel for the petitioner pointed out that the order of detention is dated 7.6.2007, whereas the grounds of detention were formulated only on 11.6.2007.

5. We have perused the records produced before us. It is apparent on the face of the records that the grounds of detention were formulated only on 11.6.2007, whereas the order of detention was passed on 7.6.2007, which, in our considered opinion, is not possible. Therefore, even before the formulation of the grounds of detention, the detention order was passed, which vitiates the order of detention.

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For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 7.6.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The Commissioner of Police
Coimbatore City.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Joint Secretary to Government,
Public (L & O) Department,
Fort St. George, Chenai-9.

5.The Public Prosecutor
High Court, Madras.

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+1cc to M/s. N.A.Nissar Ahmed, Advocate Sr 67193

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km/22.11.

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